

was an incredible act of class and compassion, an incredible display of perspective and sympathy. It was, appropriately enough, perfect.

In recent days, we have seen insurance companies try to avoid responsibility for denying health care to the sick. We have seen Wall Street executives try to avoid responsibility for millions of layoffs and millions more foreclosed homes. We have seen oil companies try to avoid responsibility for environmental disasters of historic proportions. We have seen too many fail to own up to their own mistakes or take responsibility for their own actions. But more than that, we have seen too many actively turn away when others have tried to hold them to account. In that context, what Jim Joyce did was as exceptional as the perfect game itself.

One call may be just one of hundreds that an umpiring crew makes each day. A single game may be just one of 162 each team will play each year. And even though baseball is the national pastime, it is merely that—a diversion. But in this episode lies a lesson for athletes about sportsmanship, for adversaries about forgiveness, for Members of Congress and for our children about integrity, and for all of us about accountability.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. There will now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. REID. Mr. President, as in executive session, I ask unanimous consent that the debate time controlled today by Senator LEAHY with respect to Executive Calendar Nos. 730, 731, and 759 be divided as follows: 5 minutes each for Senators BOXER and MCCASKILL and the remaining 20 minutes under the control of Senator LEAHY.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I ask unanimous consent to speak for up to 45 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

SENATE'S ROLE IN SUPREME COURT NOMINATIONS

Mr. SPECTER. Mr. President, I have sought recognition to comment on the

way in which the Senate discharges its constitutionally assigned responsibility to consent to the appointment of Justices to the Supreme Court of the United States.

With almost 30 years of experience, my thinking on this subject has evolved and changed. At the outset, I thought the President was entitled to considerable deference, providing the nominee was academically and professionally well qualified, under the principle that elections have consequences. With the composition of the Supreme Court a Presidential campaign issue, it has become acceptable for the President to make ideological selections. As the Supreme Court has become more and more of an ideological battleground, I have concluded that Senators, under the doctrine of separation of power, have equal standing to consider ideology.

For the most part, notwithstanding considerable efforts by Senators, the confirmation process has been sterile. Except for Judge Bork, whose extensive paper trail gave him little choice, nominees have danced a carefully orchestrated minuet, saying virtually nothing about ideology.

As I have noted in the past, nominees say only as much as they think they have to in order to be confirmed. When some nominees have given assurances about a generalized methodology, illustrated by Chief Justice Roberts and Justice Alito, their decisions have been markedly different. In commenting on those Justices, or citing critical professorial evaluations of their deviations, I do not do so to challenge their good faith. There is an obvious difference between testimony before the Judiciary Committee and deciding a case in controversy. But it is instructive to analyze nominees' answers for Senators to try to figure out how to get enough information on judicial ideology to cast an intelligent vote.

In seeking to determine where a nominee will go once confirmed, a great deal of emphasis is placed on the nominee's willingness to commit to, and in fact follow, stare decisis. If the nominee maintains that commitment, then there are established precedents to know where the nominee will go. But, as has frequently been the case, the assurances on following stare decisis have not been followed. I use the illustrations of Chief Justice Roberts and Justice Alito as two recent confirmation processes—in 2005 and 2006—as illustrative.

Chief Justice Roberts testified extensively about his purported fidelity to stare decisis. For example, during his confirmation hearing, he said:

I do think that it is a jolt to the legal system when you overrule a precedent. Precedent plays an important role in promoting stability and evenhandedness. It is not enough—and the Court has emphasized this on several occasions. It is not enough that you may think the prior decision was wrongly decided. . . . I think one way to look at it is that the Casey decision itself, which applied the principle of stare decisis to Roe v.

Wade, is itself a precedent of the Court, entitled to respect under principles of stare decisis.

He went on to say:

Well, I think people's personal views on this issue derive from a number of sources, and there's nothing in my personal views based on faith or other sources that would prevent me from applying the precedents of the Court faithfully under principles of stare decisis.

Less than a year later, Justice Alito was no less emphatic. He testified:

I think the doctrine of stare decisis is a very important doctrine. It's a fundamental part of our legal system, and it's the principle that courts in general should follow their past precedents. . . . It's important because it protects reliance interests and it's important because it reflects the view that courts should respect the judgment and the wisdom that are embodied in prior judicial decisions.

He went on to say:

There needs to be a special justification for overruling a prior precedent.

Of consequence, along with adhering to the principle of stare decisis, is the Justices' willingness to accept the findings of fact made by Congress through the extensive hearing processes in evaluating the sufficiency of a record to uphold the constitutionality of legislative enactments. Here again, Chief Justice Roberts and Justice Alito gave emphatic assurances that they would give deference to congressional findings of fact.

Chief Justice Roberts testified as follows:

The Court can't sit and hear witness after witness after witness in a particular area and develop a kind of a record. Courts can't make the policy judgments about what kind of legislation is necessary in light of the findings that are made. . . . We simply don't have the institutional expertise or the resources or the authority to engage in that type of a process. . . . The courts don't have it. Congress does. It's constitutional authority. It's not our job. It is your job. So the deference to Congressional findings in this area has a solid basis.

Chief Justice Roberts went on to say:

[A]s a judge, you may be beginning to transgress into the area of making a law . . . when you are in a position of reevaluating legislative findings, because that doesn't look like a judicial function.

But what happened in practice was very different, illustrated by the decision where the Chief Justice, in discussing *McConnell v. Federal Election Commission*, did not say whether *McConnell* was correctly decided. But the Chief Justice did acknowledge, as the Court emphasized in its decision, that the act was a product of an "extraordinarily extensive [legislative] record. . . . My reading of the Court's opinion," said Chief Justice Roberts in his testimony, "is that that was a case where the Court's decision was driven in large part by the record that had been compiled by Congress. . . . [T]he determination there was based . . . that the extensive record carried a lot of weight with the Justices."

When the issue of campaign finance reform came up later before the Court,